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eBay Inc.

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION
13

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 vs.
17 EBAY INC.,
18 Defendant.

CASE NO. CV12-05869-EJD-PSG

DEFENDANT'S ANSWER TO AMENDED
COMPLAINT

1 Defendant eBay Inc. (“eBay”) answers the Amended Complaint (“Complaint”) and
2 alleges its affirmative defenses as follows. eBay denies that it committed any wrongdoing or
3 violation of law that harmed its employees or anyone else.

4 In eBay’s view, DOJ’s Complaint has no merit. The Complaint does not allege that
5 eBay’s practices harmed anyone, let alone affected marketwide outcomes. DOJ does not allege
6 that eBay’s practices were motivated by a desire to lower the salaries or benefits of any employee
7 or that the practices were motivated by any other anticompetitive purpose. Rather, the Complaint
8 explains that eBay’s practices arose out of a desire to accommodate the reasonable concerns of a
9 valued eBay Board member. eBay’s practices do not amount to an unreasonable restraint of trade
10 and, thus, do not violate Section One of the Sherman Act.

11 eBay denies all allegations contained in the section headings and other portions of the
12 Complaint that are not contained within the specifically numbered Paragraphs of the Complaint.
13 Unless otherwise specifically noted, eBay lacks knowledge or information sufficient to admit or
14 deny the truth of allegations concerning persons or entities other than eBay. To the extent that the
15 Complaint contains allegations concerning other persons or entities, eBay denies that such
16 allegations support any claim for relief against eBay. eBay objects to responding to any legal
17 conclusions contained within the Complaint.

18 In this Answer, eBay reiterates the headings as they appear in the Complaint solely as
19 reference points to provide context. eBay’s reiteration of the section headings is in no way an
20 admission or endorsement of any statement, allegation, or argument contained in such headings.

21 **NATURE OF THE ACTION**

22 1. Defendant admits that Plaintiff’s Complaint purports to bring this action under
23 Section 1 of the Sherman Act. Defendant further admits that Meg Whitman has held the title of
24 CEO of eBay. Defendant further admits that Scott Cook has held the titles of Founder and
25 Chairman of the Executive Committee at Intuit. Defendant denies that it entered into a no-
26 solicitation and no-hiring agreement with Intuit as alleged by the Plaintiff, and further denies that
27 Defendant has committed any wrongdoing or violation of law that harmed its employees or
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1 anyone else. Defendant lacks knowledge or information sufficient to admit or deny the truth of
2 allegations concerning entities or persons other than eBay, and on that basis denies them. Except
3 as otherwise expressly admitted, Defendant denies each and every allegation in Paragraph 1.

4 2. Defendant denies the existence of the agreement as alleged by the Plaintiff, and on
5 that basis denies each and every allegation in Paragraph 2. Defendant lacks knowledge or
6 information sufficient to form a belief about the truth of allegations concerning entities or persons
7 other than eBay, and on that basis denies them.

8 3. Defendant denies the existence of the agreement as alleged by the Plaintiff, and on
9 that basis denies each and every allegation in Paragraph 3. Defendant lacks knowledge or
10 information sufficient to admit or deny the truth of allegations concerning entities or persons
11 other than eBay, and on that basis denies them.

12 4. Defendant admits that Plaintiff seeks an order for injunctive “and other” relief
13 pursuant to Section 1 of the Sherman Act, 15 U.S.C. § 1, but denies that Defendant has
14 committed any wrongdoing or violation of law that harmed its employees or anyone else. Except
15 as otherwise expressly admitted, Defendant denies each and every allegation in Paragraph 4.

16 **JURISDICTION AND VENUE**

17 5. Defendant admits that it conducts business with customers throughout the United
18 States. Defendant further admits that it employs many individuals in a wide array of capacities.
19 Defendant further admits that the Court has subject matter jurisdiction over this action. Except as
20 otherwise expressly admitted, Defendant denies each and every allegation in Paragraph 5.

21 6. Defendant admits that venue in this judicial district is proper. Defendant further
22 admits that it transacts or has transacted business in this judicial district and has its principal place
23 of business within the district. Except as otherwise expressly admitted, Defendant denies each
24 and every allegation in Paragraph 6.

25 **INTRADISTRICT ASSIGNMENT**

26 7. Defendant admits that venue in this judicial district is proper. Defendant further
27 admits that its principal place of business is in Santa Clara County. Defendant further admits that
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1 the Attorney General of the State of California filed a related complaint, which the Court
2 dismissed on September 27, 2013. Defendant lacks knowledge or information sufficient to form
3 a belief as to the truth of the remaining allegations in Paragraph 7, and on that basis denies them.
4 Except as otherwise expressly admitted, Defendant denies each and every allegation in Paragraph
5 7.

6 **DEFENDANT**

7 8. Defendant admits that it is a Delaware corporation with its principal place of
8 business in San Jose, California.

9 **CO-CONSPIRATORS**

10 9. Defendant admits that the Amended Complaint does not name Intuit or its senior
11 executives as defendants. Defendant denies that senior executives at eBay participated as co-
12 conspirators in the alleged actions. Defendant lacks knowledge or information sufficient to form
13 a belief as to the truth of the remaining allegations in Paragraph 9, and on that basis denies them.
14 Except as otherwise expressly admitted, Defendant denies each and every allegation in Paragraph
15 9.

16 **TRADE AND COMMERCE**

17 10. Defendant admits that Beth Axelrod co-authored a book entitled *The War for*
18 *Talent* approximately twelve years ago and that the book contains the language quoted in
19 Paragraph 10. Defendant lacks information or knowledge sufficient to form a belief as to the
20 remaining allegations in Paragraph 10, and on that basis denies them. Except as otherwise
21 expressly admitted, Defendant denies each and every allegation in Paragraph 10.

22 11. Defendant admits that *The War for Talent* contains the language quoted in
23 Paragraph 11. Defendant denies the existence of the agreement as alleged by the Plaintiff, and on
24 that basis denies each and every allegation in Paragraph 11 regarding the alleged agreement.
25 Defendant lacks knowledge or information sufficient to form a belief about the remaining
26 allegations in Paragraph 11, and on that basis denies them. Except as otherwise expressly
27 admitted, Defendant denies each and every allegation in Paragraph 11.
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1 allegations characterizing or paraphrasing the substance of those communications. Except as
2 otherwise expressly admitted, Defendant denies each and every allegation in Paragraph 16.

3 17. Defendant denies the existence of the agreement as alleged by the Plaintiff, and on
4 that basis denies each and every allegation in Paragraph 17 regarding the alleged agreement.
5 Defendant admits the existence of email communications dated within August 2006 and
6 containing the language quoted in Paragraph 17, but denies the remainder of Plaintiff's
7 allegations characterizing or paraphrasing the substance of those communications. Except as
8 otherwise expressly admitted, Defendant denies each and every allegation in Paragraph 17.

9 18. Defendant denies the existence of the agreement as alleged by the Plaintiff, and on
10 that basis denies each and every allegation in Paragraph 18 regarding the alleged agreement.
11 Defendant admits that David Knight held the title of Vice President, Internal Communications at
12 eBay in April 2007. Defendant further admits the existence of email communications dated
13 within April and May 2007 and containing the language quoted in Paragraph 18, but denies the
14 remainder of Plaintiff's allegations characterizing or paraphrasing the substance of those
15 communications. Except as otherwise expressly admitted, Defendant denies each and every
16 allegation in Paragraph 18.

17 19. Defendant admits the existence of email communications containing the language
18 quoted in Paragraph 19, but denies the remainder of Plaintiff's allegations characterizing or
19 paraphrasing the substance of those communications. Defendant admits that David Knight
20 extended an offer to an applicant he described as an Intuit employee. Defendant admits that Ms.
21 Axelrod's response included the quoted language, "no flexibility" and "hands off," but denies the
22 remainder of Plaintiff's allegations characterizing or paraphrasing the substance of that response.
23 Except as expressly otherwise admitted, Defendant denies each and every allegation in Paragraph
24 19.

25 20. Defendant admits the existence of email communications containing the language
26 quoted in Paragraph 20, but denies the remainder of Plaintiff's allegations characterizing or
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1 paraphrasing the substance of those communications. Except as expressly otherwise admitted,
2 Defendant denies each and every allegation in Paragraph 20.

3 21. Defendant admits the existence of email communications containing the language
4 quoted in Paragraph 21, but denies the remainder of Plaintiff's allegations characterizing or
5 paraphrasing the substance of those communications. Defendant lacks knowledge or information
6 sufficient to form a belief about the truth of allegations concerning entities or persons other than
7 eBay, and on that basis denies them. Except as expressly admitted, Defendant denies each and
8 every allegation in Paragraph 21.

9 22. Defendant admits the existence of email communications dated within August
10 2007 and containing the language quoted in Paragraph 22, but denies the remainder of Plaintiff's
11 allegations characterizing or paraphrasing the substance of those communications. Except as
12 expressly admitted, Defendant denies each and every allegation in Paragraph 22.

13 23. Defendant denies the existence of the agreement as alleged by the Plaintiff, and on
14 that basis denies each and every allegation in Paragraph 23 regarding the alleged agreement.
15 Defendant admits the existence of email communications containing the language quoted in
16 Paragraph 23, but denies the remainder of Plaintiff's allegations characterizing or paraphrasing
17 the substance of those communications. Defendant further admits that there were periods of time
18 during which it did not hire applicants who, at the time of their application, were currently
19 employed by Intuit. Defendant further admits that Ms. Axelrod emailed Mr. Cook to confirm an
20 applicant's assertion that she had left Intuit. Except as expressly admitted, Defendant denies each
21 and every allegation in Paragraph 23.

22 24. Defendant denies the existence of the agreement as alleged by the Plaintiff, and on
23 that basis denies each and every allegation in Paragraph 24 regarding the alleged agreement.
24 Defendant admits the existence of email communications containing the words "passed" and
25 "talented," but denies the remainder of Plaintiff's allegations characterizing or paraphrasing the
26 substance of those communications. Defendant lacks knowledge or information sufficient to
27 form a belief about the truth of allegations concerning entities or persons other than eBay, and on
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1 that basis denies them. Except as expressly admitted, Defendant denies each and every allegation
2 in Paragraph 24.

3 25. Defendant denies the existence of the agreement as alleged by the Plaintiff, and on
4 that basis denies each and every allegation in Paragraph 25 regarding the alleged agreement.
5 Defendant admits the existence of email communications dated within June 2009 and containing
6 the language quoted in Paragraph 25, but denies the remainder of Plaintiff's allegations
7 characterizing or paraphrasing the substance of those communications. Except as expressly
8 admitted, Defendant denies each and every allegation in Paragraph 25.

9 **VIOLATION ALLEGED**

10 **(Violation of Section 1 of the Sherman Act)**

11 26. In answering paragraph 26 of the Complaint, Defendant incorporates herein, as
12 though fully set forth, its responses to Paragraphs 1 to 25 above, and asserts them in response to
13 Paragraph 26 of the Complaint.

14 27. Paragraph 27 contains legal conclusions to which no response is required. Except
15 as expressly admitted, Defendant denies each and every allegation in Paragraph 27 of the
16 Complaint.

17 28. Paragraph 28 contains legal conclusions to which no response is required. Except
18 as expressly admitted, Defendant denies each and every allegation in Paragraph 28 of the
19 Complaint.

20 29. Paragraph 29 contains legal conclusions to which no response is required. Except
21 as expressly admitted, Defendant denies each and every allegation in Paragraph 29 of the
22 Complaint.

23 **DEFENDANT'S AFFIRMATIVE DEFENSES**

24 Without assuming any burden of proof it would not otherwise bear, Defendant asserts the
25 following affirmative or other defenses. Defendant reserves the right to assert further defenses as
26 discovery proceeds.

27 **FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff's claim is barred, in whole or in part, by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

(Independent Business Justifications)

Plaintiff's claim is barred because Defendant's alleged conduct has been based on independent, legitimate business and economic justifications, without any purpose or intent to injure competition.

FOURTH AFFIRMATIVE DEFENSE

(Pro-Competitive Justifications)

Plaintiff's claim is barred because it is not based on exclusionary conduct but rather is based on conduct that has the purpose or effect of promoting, encouraging, or increasing competition.

FIFTH AFFIRMATIVE DEFENSE

(Offset)

Plaintiff's claim is barred, in whole or in part, to the extent that any claimed injury has been offset by benefits received with respect to the challenged conduct.

SIXTH AFFIRMATIVE DEFENSE

(Ultra Vires)

Plaintiff's claim is barred to the extent that any actionable conduct was committed by any individual acting ultra vires.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiff's claim is barred by the doctrine of laches.

PRAYER FOR RELIEF

1 WHEREFORE, Defendant eBay prays:

- 2 1. That the Complaint be dismissed as against Defendant, with prejudice;
3 2. For the costs of suit and reasonable attorneys' fees incurred herein; and
4 3. For such other relief as the Court deems just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendant hereby demands a
7 trial by jury of all issues triable by jury.

8 DATED: _____, 2013 PAUL HASTINGS LLP
9 Thomas P. Brown
10 Samuel C. Zun
11 Emily Dodds Powell

12 By: /s/ Thomas P. Brown
13 Thomas P. Brown

14 Attorneys for Defendant
15 eBay Inc.